Docket: 2008-3562(IT)G

BETWEEN:

LES ATELIERS FERROVIAIRES DE MONT-JOLI INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 25 and 26, 2010, at Rimouski, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

Counsel for the appellant:	Pierre Lévesque
Counsel for the respondent:	Anne Poirier

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the reassessments made under the *Income Tax Act* for the 2004 and 2005 taxation years is allowed, with costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that

(a) the robotic drill, band saw, overhead travelling crane, bolt rack and press are "qualified property", and that AFM is entitled to claim the investment tax credit for this equipment;
(b) the aforesaid equipment falls within class 43.

Signed at Ottawa, Ontario, this 15th day of July 2011.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 26th day of October 2011.

Erich Klein, Revisor

Citation: 2011 TCC 352
Date: 20110715
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REASONS FOR JUDGMENT

Jorré J.

[1] The appellant, Les Ateliers Ferroviaires de Mont-Joli inc. (AFM),[1] is appealing reassessments for the 2004 and 2005 taxation years.

[2] Either in 2004 or 2005, AFM acquired five pieces of equipment: a robotic drill, a band saw, an overhead travelling crane, a bolt rack and a press (the equipment).

[3] In filing its income tax returns for 2004 and 2005, AFM claimed an investment tax credit under subsection 127(5) of the *Income Tax Act* (ITA) with respect to the equipment. AFM also claimed capital cost allowance with respect to the equipment on the basis that it was class 43 property.

[4] The Minister of National Revenue (Minister) issued reassessments; he disallowed the investment tax credit and classified the equipment as class 8 property.

[1] Originally, AFM was called 9035-3335 Québec inc. Subsequently, 9035-3335 Québec inc. changed its name to Les Entreprises Rock Morel inc. and, in 2005, to Les Ateliers Ferroviaires de Mont-Joli inc. For ease of reading, I will only refer to AFM.

[5] The parties agree that if AFM is correct on the investment tax credit issue, the equipment falls within class 43.[2] Accordingly, I need only decide whether AFM is entitled to claim the investment tax credit.

[6] The issue is whether the equipment is "qualified property" as defined in subsection 127(9) of the ITA. The parties agree that all the conditions in the definition of "qualified property" are met, except one.

[7] The parties agree, for example, that the equipment was used for "manufacturing or processing goods". They disagree on whether this primarily involved manufacturing or processing goods "for sale or lease" as required by subparagraph (*c*)(i) of the definition of "qualified property" in subsection 127(9) of the ITA:

> "qualified property" of a taxpayer means property . . . that is
>
> (*a*) a prescribed building . . .
>
> (*b*) prescribed machinery and equipment acquired by the taxpayer after June 23, 1975,
>
> that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer and that is
>
> (*c*) to be used by the taxpayer in Canada primarily for the purpose of
>
> (i) manufacturing or processing goods for sale or lease,
>
> . . .

[8] While AFM contends that the goods were primarily for sale within the meaning of article 1708 of the *Civil Code of Québec* (CCQ), the respondent submits that essentially the goods were not sold but were used in the course of contracts of enterprise or for services within the meaning of article 2098 of the CCQ.

[2] The parties also agree that if AFM is not entitled to the credit, the equipment does not fall within class 43.

[9] Articles 1708 and 2098 and the third paragraph of article 2103 of the CCQ provide as follows:

> 1708. Sale is a contract by which a person, the seller, transfers ownership of property to another person, the buyer, for a price in money which the latter obligates himself to pay.
>
> A dismemberment of the right of ownership, or any other right held by the person, may also be transferred by sale.
>
> . . .
>
> 2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.
>
> . . .
>
> 2103. . . . A contract is a contract of sale, and not a contract of enterprise or for services, where the work or service is merely accessory to the value of the property supplied.

[10] The facts are not in dispute.

[11] Rock Morel, the owner of AFM, has worked in the railway industry for over 30 years and is a former employee of the Canadian National Railway Company (CN).

[12] In 1996, he left CN to establish AFM, a firm of consultants on bridges and structures that offered its services to railways. The Société des chemins de fer du Québec was its primary client.

[13] In 1996 and 1997, the services AFM offered were consultation, inspection and maintenance program set-up. It also created structure management systems for railways. These structure management systems defined the work to be done for each bridge and culvert and assisted railway companies in complying with the requirements of Transport Canada or Transport Québec, as the case may be.

[14] In 1998, the president of the Société des chemins de fer du Québec asked AFM to provide a railway structures repair or improvement service. Accordingly,

Mr. Morel launched Groupe Séma structures ferroviaires inc. (Séma) to provide a turnkey service to railways. Mr. Morel is the owner of Séma.

[15] The turnkey service had two aspects. First, there was an inspection of all structures in order to meet industry standards. The service ensured that annual inspections were carried out, that the condition of structures was known, that a work program was established with respect to the improvements to be done, and that these improvements were in fact done.

[16] The service also included the requisite construction and repairs.

[17] To provide this type of turnkey service, Séma recruited engineers, technicians, foremen and bridge workers, trained its employees and purchased the required equipment.

[18] Séma had a general contractor's licence and, aside from the turnkey service, was invited to bid on repair, reinforcement and construction work, primarily on railway structures.

[19] Prior to the commencement of repairs or construction, a qualified engineer would prepare designs. Often the work required steel pieces, and the engineers produced specifications for those pieces, for example, bridge framework, bridge pieces, reinforcement plates, angle irons and metal beams.

[20] These pieces had to be fabricated with steel that met railway industry standards; they had to correspond to the specifications with respect to form, dimensions and, if necessary, hole placement, galvanization or metallization, etc. This required a good quality control system; the fabricator had to be accredited by the Canadian Welding Bureau.

[21] Until 2003, Séma purchased the steel pieces it needed for structural repairs from companies that were not related to Séma. These companies fabricated the pieces in accordance with the specifications sent by Séma.

[22] After the subcontractors had fabricated the steel pieces and sent them to Séma, Séma installed them in the course of the repair or reconstruction work.

[23] In 2003, Séma experienced a certain amount of growth and had problems obtaining steel pieces that met the requisite standards. Mr. Morel decided it would be preferable to fabricate his own pieces instead of acquiring them from subcontractors.

[24] When he wanted to begin fabricating steel pieces, Ms. Guérette, his financial advisor, recommended that he split the company.

[25] Accordingly, Mr. Morel created AFM and purchased a building to be used for the processing and fabricating of steel pieces. He also took steps to get accredited by the Canadian Welding Bureau and to implement a quality control system so as to comply with the railway industry's requirements.

[26] AFM's workshop employed 12 to 15 people who worked exclusively for AFM. The accounting system and the pay system for AFM employees were separate from the Séma systems.

[27] After AFM was created, Séma operated the same way that it had operated before, except that it no longer dealt with subcontractors to obtain steel pieces, but with AFM.

[28] Séma ordered metal pieces from AFM, which then fabricated them.

[29] The fabrication process was as follows: first, the supervisor, using the specifications, calculated the material required; then, the supervisor purchased the steel from suppliers, and the steel was cut, drilled, ground, welded, sanded, etc.; once assembled, the steel was delivered to Séma, which used the pieces in the course of its work.

[30] The equipment at the heart of this dispute, i.e., the robotic drill, the band saw, the overhead travelling crane, the bolt rack and the press, was used in fabricating the steel pieces.

[31] I note that Séma did not provide material to AFM for the fabrication of the steel pieces.

[32] Once AFM began fabricating steel pieces, CN started to order pieces from AFM. Thus, during the years 2003, 2004 and 2005, AFM fabricated steel pieces for CN and for the Illinois Central Railroad.[3]

[33] AFM had other unrelated clients for which it did small jobs, generally supplying or cutting.

[34] During the period at issue, the unrelated clients that purchased steel pieces represented a small part of the sales of pieces. Séma purchased the great majority of the fabricated steel pieces.[4]

[35] In addition to producing steel, AFM carried on other activities.

[36] The premises that Séma used were leased to it by AFM. AFM provided administrative services to Séma. The equipment at issue has no connection with those two activities.

[37] AFM owned a fleet of road vehicles that it leased to Séma.

[38] In addition, AFM fabricated, installed and maintained "hi-rail" equipment. This is equipment added to road vehicles that allows them to run on rails.

[39] These services with respect to the "hi-rail" equipment were provided to unrelated clients. They were also provided to Séma (insofar as the vehicles that AFM leased to Séma had "hi-rail" equipment).

[40] The equipment at the heart of this dispute was used in fabricating and installing "hi-rail" equipment.

[41] AFM's revenues break down as follows:

Revenues	**2004**	**2005**
Rent	$149,792	$197,931
Leasing of vehicles	139,761	497,433
Administration	189,412	242,989

[3] A subsidiary of CN. Once the steel piece was fabricated, AFM sent it to the client. AFM was involved exclusively with fabricating steel, not installing it.

[4] Just after the period at issue, another related company was created and became a client, i.e., Séma Railway Structures Inc.

Repair of vehicles*	54,967	63,622
"Sale" of steel to Séma	312,323	312,380
Service	610	2,185
Total	$846,865	$1,316,5[40]

*This revenue is the revenue that corresponds to the activity related to the "hi-rail" equipment supplied to clients.

[42] The revenues from the rent and administrative services are not relevant to the appeal because the equipment at issue was not used for those activities.[5]

[43] With respect to the revenue from the leasing of vehicles, the evidence showed that part of these revenues was simply from the leasing and that another part was from the changes for repairing those leased vehicles.[6]

[44] For example, for the 2005 taxation year, the breakdown of the revenue from the leasing of vehicles was $384,600 for the simple leasing and $112,832.50 for repairing the leased vehicles.[7]

Analysis[8]

[45] Was the equipment at issue used "primarily" for "manufacturing or processing goods for sale or lease"?[9]

[46] The respondent did not make the following argument at the hearing, but it can be found among the reasons justifying the confirmation in the report on objection:

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[5] For the purposes of the definition of "depreciable property", the primary use of the property is what is important, not the primary activity of the business.

[6] The price of a simple lease of a vehicle is equal to its depreciation plus 15% (transcript, January 25, 2010, questions 614 to 621; Exhibit A-1, Tab 7, first and second pages).

[7] Exhibit A-1, Tab 7, last page.

[8] In addition to the relevant provisions of the CCQ and the ITA, the parties filed the following authorities, case law and government documents: *Will-Kare Paving & Contracting Ltd. v. Canada*, 2000 SCC 36; *Canada v. Hawboldt Hydraulics (Canada) Inc. (Trustee of)*, [1995] 1 F.C. 830 (FCA), leave to appeal refused by [1994] SCCA No. 401 (QL); *C.R.I. Environnement Inc. v. The Queen*, 2007 TCC 206, aff'd. by 2008 FCA 103; *Stowe-Woodward Inc. v. The Queen*, 92 DTC 6149 (F.C.T.D.); *Albert v. The Queen*, 2009 TCC 16; *Leblanc c. Pemp Inc.*, [1994] J.Q. No. 597 (QL); Interpretation Bulletin IT-145R: Canadian Manufacturing and Processing Profits; Technical Interpretation 9910355F: Transformation d'articles destinés à la vente (October 25, 1999); Technical Interpretation 9904125F: Transformation d'articles destinés à la vente (October 20, 1999); *Bénéfices de fabrication et de transformation: Optimisation du crédit et pièges à éviter*, Collection APFF (October 6, 1999).

[9] Definition of "qualified property" in subsection 127(9) of the ITA.

> [TRANSLATION]
> The only revenue that qualifies as being with respect to goods for sale . . . is from the sale of steel to Séma, a related corporation. This revenue represented **24% to 37%**, i.e., less than 50% [of the appellant's revenues].[10]

[47] This calculation was done by comparing the revenues from sales to Séma in 2004 and 2005 with the total amount of the appellant's revenues.[11]

[48] The respondent was quite right not to argue this ground at the hearing because the question to be asked is: was the equipment used primarily for manufacturing or processing goods for sale or lease? The question is not: was the appellant's primary activity the manufacturing or processing of goods for sale or lease?

[49] Consequently, the revenues from rent, the simple leasing of vehicles and administrative services are irrelevant since the equipment at issue was not used for those activities.

[50] The table below shows the revenues from the activities in which the equipment at issue was used:

Revenues	**2004**	**2005**
Repair of leased vehicles*	(less than) $139,761	$112,832
Repair of vehicles	54,967	63,622
"Sale" of steel to Séma	312,323	312,380
Service**	610	2,185
Total	(less than) $507,661	$491,019

*For 2004, the breakdown of revenues from the leasing of vehicles between simple leasing and the revenues from repairing those vehicles is not in evidence.

**The nature of revenues in the "service" category is unclear, but the amounts are too small to have any impact whatsoever on the result.

[51] It can be seen that in 2004 and 2005 more than half of the revenues were derived from the "sale" of steel to Séma. If the transactions whereby steel pieces were

[10] Exhibit I-1, Tab 11, page 4.
[11] See paragraph 41 above.

supplied to Séma are legally sales, it is clear that the equipment at issue was used "primarily" for manufacturing goods for sale.[12]

[52] At first glance, the transactions between AFM and Séma appear to be contracts of sale. Séma ordered a steel piece and provided very precise specifications for the piece. AFM obtained the requisite materials, made the piece to order and transferred the ownership of the piece to Séma. All the essential elements of article 1708 of the CCQ are present.[13]

[53] Three arguments in support of the reassessments were raised, either directly or by implication:

(a) Because AFM and Séma are related and because Séma provided services, the contract is a contract of enterprise or for services under article 2098 of the CCQ and not a contract of sale.
(b) For a contract of sale to exist, the goods must be property that could be sold to other persons, not just the person who ordered the custom-made goods.
(c) The contract is a contract of enterprise because the value of the work done by AFM exceeds the value of the materials used by AFM.

[54] With respect to the first argument, the initial problem with that approach is that one must ignore the fact that AFM and Séma are, legally, two distinct corporations. I do not see which provision of the ITA or which legal principle would permit me to disregard the existence of two distinct legal entities.

[55] Therefore, I cannot agree with such an approach.[14]

[56] As for the second argument, counsel did not cite any case law that stands for the proposition that there cannot be a sale of goods simply because the goods are unique goods manufactured for one client.

[57] More and more goods are being made to order for the client. The "high end" in manufacturing is the manufacturer who can quickly fill an order for goods intended

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[12] There is no other evidence on how use of the equipment in question was divided among the various activities; for example, there is no estimate of the hours of use by activity. However, from a qualitative standpoint, the description of the various activities leads me to conclude that, in terms of time, the use of the equipment in fabricating steel pieces was at least as significant as it was in terms of relevant revenues.
[13] The applicable private law must be looked at to ascertain whether the contract is a contract of sale or not: *Will-Kare Paving & Contracting Ltd. v. Canada* (SCC) (note 8 above).
[14] The respondent did not directly argue that the corporate veil could be lifted in such circumstances.

to satisfy a client's specific needs. It would be surprising to discover that such a manufacturer that makes unique goods to order to meet a client's needs does not sell those goods to that client.[15]

[58] The first paragraph of article 1708 of the CCQ reads as follows:

> 1708. Sale is a contract by which a person, the seller, transfers ownership of property to another person, the buyer, for a price in money which the latter obligates himself to pay.
>
> . . .

[59] As I wrote above, in the present case, every time Séma ordered a piece, AFM created the piece. In creating the piece, AFM became the owner of the piece, which it sold to Séma to complete the contract.

[60] All the elements of a contract of sale are present. There is property and a transfer of the ownership of the property from AFM to Séma. Consequently, I do not see how I could find that the contract is not a contract of sale because of the respondent's second argument.

[61] Finally, the third argument attaches a great deal of importance to the third paragraph of article 2103 of the CCQ, which reads as follows:

> 2103. . . . A contract is a contract of sale, and not a contract of enterprise or for services, where the work or service is merely accessory to the value of the property supplied.

Moreover, the respondent contends that, conceptually, this situation is similar to the one in *Albert v. The Queen*.[16]

[62] In *Albert*, what the dentist did was a complete process of repairing or improving a tooth: examining the tooth, preparing the tooth, taking the necessary steps to make a crown, making the crown, and finally installing the crown.

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[15] To avoid any confusion, I am speaking about a manufacturer that obtains itself all the materials and all the parts required to manufacture the end product. The situation may be different if the client provides all the materials and all the parts.

[16] See note 8 above.

[63] I agree with the *Albert* decision, but the situation here is different. In *Albert*, the dentist himself made the crown. To have the same situation here would require that AFM not be a distinct legal entity from Séma.[17]

[64] Furthermore, one must be very mindful of the context before applying the third paragraph of article 2103 of the CCQ.

[65] In *Albert*, Justice Bédard said:

> 17 Because I am of the opinion that the Appellant and his patients had only one contract, it must now be determined whether it was a contract of sale or a contract for services. According to *Will-Kare Paving & Contracting Ltd. v. Canada*, [2000] S.C.R. 915, 2000 S.C.C. 36, it must be assumed that Parliament, in speaking of the concept of sale in paragraph 12(9)(*c*) of the Act, wanted it to be interpreted by reference to the general law of sale. In my opinion, the concept of "sale" must be analyzed with respect to Quebec civil law when the applicable law is Quebec's. In this regard, it is sufficient to consult the Federal Court of Appeal decision in *St-Hilaire v. Canada*, [2004] 4 F.C. 289 (F.C.A.) and section 8.1 of the *Interpretation Act* (R.S.C. 1985, c. I-21). *The relevant provisions of the CCQ show us that in essence, we are in the presence of a contract of sale when the work is merely accessory to the value of the materials. In his work, author Pierre Gabriel Jobin writes the following: [TRANSLATION] "For a sale to exist, there must be evidence that the difference between the respective value of the labour and the materials is so considerable that the labour is . . . perceived as [merely] an accessory". The evidence revealed in this case that the value of the labour was always higher than that of the materials, so it must be concluded the parties had a contract for services, as the property was not used by the Appellant primarily for the purpose of manufacturing or processing goods for sale or lease. As a result, we must conclude that the property was not "qualified property" for the purposes of the Appellant's claim for credits for the year concerned.*
>
> [Emphasis added.]

[66] It must be noted that the third paragraph of article 2103 of the CCQ is found in Section II (Rights and obligations of the parties) of Chapter VIII (Contract of enterprise or for services) of Title Two (Nominate contracts) of Book Five (Obligations) of the CCQ. Chapter I (Sale) of the same Title and Book has no equivalent provision.

[67] Justice Bédard cites Professor Pierre-Gabriel Jobin, who says in his book *La vente*[18] at pages 6 and 7:

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[17] If the respondent were correct in the second argument, an independent manufacturer of crowns could not sell crowns since each one is custom-made. The contract would be a contract of enterprise.

[18] Pierre-Gabriel Jobin, *La vente*, 3rd ed. (Cowansville: Éditions Yvon Blais, 2007).

[TRANSLATION]

> **4—Distinguishing from the contract of enterprise—**The distinction between the sale of future property and the contract of enterprise in which the contractor or seller provides the material and must deliver the property once it is finished gave rise to some hesitation in the former jurisprudence. In reforming the *Civil Code*, the legislature put an end to this uncertainty. A new provision, *taking up* a judge's opinion in an old case and *the Vienna Convention solution* (article 3), sets as the distinguishing criterion the relative value of the work and the materials: such contracts are now *a priori* considered contracts of enterprise; they involve a sale when the work is "merely accessory" to the value of the materials. For a sale to exist, there must therefore be evidence that the difference between the respective value of the labour and the materials is so considerable that the labour is perceived merely as an accessory. This solution has the merit of clarity but completely ignores the qualitative aspect and is sometimes unsatisfactory.
>
> [Emphasis added. Footnotes omitted.]

[68] This passage could be read as supporting the proposition that there cannot be a sale if the value of the manufacturer's work is markedly greater than the value of the materials used. I do not believe that this is the proper way to read the passage.

[69] Let us imagine an integrated manufacturer that buys only low-value raw materials and does almost all the work to create an item of property. The value of the work in that case greatly exceeds the value of the materials.[19] If the distinction between a contract of sale and a contract of enterprise or for services is a function only of relative value, that would mean that, in such a case, the factory is not selling property but a service.[20]

[70] The distinction between a contract of sale and a contract of enterprise or for services does not simply depend on the relative value of the materials and of the work done by the manufacturer.

[71] I reach this conclusion for the reasons stated below.

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[19] Here are two examples: (i) a factory that makes wooden furniture and sells the furniture to the factory where most of the value is in the work done at the factory, and (ii) Ford's famous Rouge River complex that, for over 30 years, produced not only vehicles but also the steel used in the vehicles, the electricity used by the complex, etc. In both cases, it is difficult to imagine that there is no contract of sale simply because the value of the work done at the factory exceeds the value of the materials.

[20] There would be another consequence. Suppose that there are two manufacturers of the same product. The first manufacturer purchases a great deal of material, including many parts. The value of that manufacturer's work is less than the value of the materials. The second manufacturer is much more integrated and manufactures all the parts itself from the materials with the result that the value of the materials is less than the value of the work. If it is only a simple question of proportion, an identical transaction in which the client obtains a manufactured item would be a contract of sale in one case but a contract of enterprise or for services in the other.

[72] First, the third paragraph of article 2103 of the CCQ is not drafted in terms of percentages: it states that there is no contract of enterprise or for services where the work or service is merely accessory to the value of the property supplied. In other words, there is no contract of enterprise where there is, in essence, a sale with accessory services.

[73] Second, Professor Jobin states that the legislature took up the solution from article 3 of the *Vienna Convention*,[21] which provides as follows:

> Article 3
>
> (1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
>
> (2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.[22]

[74] Paragraph 1 of article 3 indicates that a contract for the supply of goods to be manufactured is to be considered a sale unless the client supplies a substantial part of the materials. Paragraph 2 of article 3 excludes contracts in which the preponderant part of the obligations is to supply labour or other services.

[75] It is clear from a reading of paragraph 2 of article 3 that the labour and other services referred to are not the labour or services required to create the property supplied. For example, if the contract is a contract for the construction and installation of a turbine, it is a contract of sale if the essential part is constructing the turbine and the installation demands little effort. The work of constructing the turbine is not taken into account, and the work of installing it is merely accessory. On the other hand, if the supplier must deliver a "turnkey" hydro-electric dam, it would not be a contract of sale.

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[21] In force in Quebec by virtue of *An Act respecting the United Nations Convention on Contracts for the International Sale of Goods*, R.S.Q., chapter C-67.01.

[22] The explanatory note by the United Nations Commission on International Trade Law Secretariat on the *United Nations Convention on Contracts for the International Sale of Goods* state the following:

> 9. Contracts of sale are distinguished from contracts for services in two respects by article 3. A contract for the supply of goods to be manufactured or produced is considered to be a sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. When the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services, the Convention does not apply.

[76] It is from this perspective that the third paragraph of article 2103 of the CCQ and the distinction between a sale and a contract of enterprise or for services must be understood.

[77] If the essence of the contract is manufacturing property and transferring the ownership of that property to the client, it is a contract of sale. The work or the service referred to in the third paragraph of article 2103 does not include a manufacturer's work to create property that it supplies to its client.[23]

[78] As a result, I cannot agree with the respondent's third argument.

[79] AFM sold the steel pieces to Séma.[24]

[80] The appeal will be allowed with costs, and the matter will be referred back to the Minister for reconsideration and reassessment on the basis that

(a) the five pieces of equipment at issue are "qualified property" and that AFM is entitled to claim the investment tax credit for this equipment;

[23] It is useful to bear in mind that this differs from situations where construction is done on the client's land and where renovations are carried out on a client's immovable because the contractor's work does not create a finished product whose ownership is subsequently transferred to the client. In such a case, the ownership is transferred to the owner-client by accession as parts of the construction or renovation of the immovable are done (CCQ, articles 954 to 964).

[24] If this finding is wrong, it would mean that a transaction subject to the *Vienna Convention* would be a sale, but an identical transaction with a client in Quebec, for example, would not.

(b) the aforesaid equipment falls within class 43.

Signed at Ottawa, Ontario, this 15th day of July 2011.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 26th day of October 2011.

Erich Klein, Revisor

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APPEARANCES:

Counsel for the appellant:	Pierre Lévesque
Counsel for the respondent:	Anne Poirier

COUNSEL OF RECORD:

For the appellant:

Name:	Jérôme Dufour-Gallant
Firm:	Cain Lamarre Casgrain Wells Rimouski, Quebec

For the respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Ontario